STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

PGSP NEIGHBORS UNITED, INC.,

Petitioner,

v.

DOAH CASE NO.: 20-4083GM
DEO CASE NO.: 21-012

CITY OF ST. PETERSBURG, FLORIDA

Respondent.

_____/

FINAL ORDER

This matter was considered by the Division of Community Development within the Florida Department of Economic Opportunity ("Department") following the receipt of a recommended order ("Recommended Order") issued by an Administrative Law Judge ("ALJ") assigned to the matter by the Division of Administrative Hearings ("DOAH").

Background

This is a proceeding to determine whether a small-scale amendment (the "Plan Amendment") to the City of St. Petersburg's Comprehensive Plan ("Plan") is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes (2020).[1] The Plan Amendment, adopted by Ordinance 739-L on August 13, 2020, amends the Plan by changing the future land use map ("FLUM") designation of the subject property located at 635 64th Street South, St. Petersburg,

[1] References to the *Florida Statutes* are to the 2020 version, which was in effect on the date the Ordinance was adopted.

Florida. The Plan Amendment changes the future land use categories as follows: approximately 4.33 acres from "institutional" to "residential medium;" approximately 0.21 acres from "institutional" to "residential urban," and approximately 0.04 acres from "residential urban" to "residential medium."

On September 14, 2020, PGSP Neighbors United, Inc. ("Petitioner"), filed a petition for an administrative hearing, challenging whether the Plan Amendment is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes. Petitioner alleges that the Plan Amendment is internally inconsistent with the City's Comprehensive Plan, in violation of section 163.3177(2), Florida Statutes, and is unsupported by relevant and appropriate data, as required by section 163.3177(1)(f), Florida Statutes.

The case was scheduled and held for final hearing on November 17 and 18, 2020. The ALJ issued the Recommended Order on March 3, 2021, recommending the Department issue a final order determining the Plan Amendment to be found in compliance. A copy of the Recommended Order is attached hereto as Exhibit "A." On March 18, 2021, the Petitioner timely filed exceptions to the Recommended Order.

Role of the Department

Petitioner filed its challenge pursuant to sections 120.569, 120.57(1), and 163.3187, Florida Statutes. The ALJ held a hearing and issued the Recommended Order, recommending that the Department find the Plan Amendment in compliance. The Department may determine that the Plan Amendment is in compliance and enter a final order to that effect or determine that the Plan Amendment is not in compliance and refer the Recommended Order and the Department's

determination to the Administration Commission for final agency action. § 163.3187(5)(b), Fla. Stat.

The Department received a record consisting of copies of the parties' pleadings, the documentary evidence introduced at the final hearing, and a two-volume transcript of the proceedings of the final hearing. The Department has reviewed the record and issues this Final Order in accordance with sections 120.57(1)(k)-(l) and 163.3187, Florida Statutes.

If the Department rejects or modifies a conclusion of law or interpretation of an administrative rule, then the Department must state with particularity its reasons for such rejection or modification. § 120.57(1)(l), Fla. Stat. If the Department rejects or modifies a finding of fact, then the Department must state with particularity that the finding was not based upon competent substantial evidence or that the proceedings on which the finding was based did not comply with essential requirements of law. *Id.*

Pursuant to section 120.57(1)(k), Florida Statutes, the Department must issue an explicit ruling on each exception. The Department is not required to rule on an exception that does not clearly identify the disputed portion of the Recommended Order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. § 120.57(1)(k), Fla. Stat.

Standard of Review

Findings of Fact

Section 120.57(1)(l), Florida Statutes, prescribes that in its issuance of a final order, the Department may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on

which the findings were based did not comply with essential requirements of law." Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc. v. Unemplmt. App. Comm'n*, 671 So. 2d 287, 290 n.3 (Fla. 5th DCA 1996). Evidence is substantial if there is "some (more than a mere iota or scintilla) real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* The Department is "not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). "If the ALJ's findings of fact are supported by competent, substantial evidence, the agency cannot reject them even to make alternate findings that are also supported by competent, substantial evidence." *Lantz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013). The Department may reject findings of fact if the proceedings on which the findings were based did not comply with the essential requirements of law. *See* § 120.57(1)(l), Fla. Stat., and *Dept. of Corrections v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987). In this context, Florida's First District Court of Appeal has characterized a failure "to comply with the essential requirements of the law" as "a procedural irregularity." *Beckett v. Dep't of Fin. Servs.*, 982 So. 2d 94, 102 (Fla. 1st DCA 2008) (ruling that the agency erred by concluding that the ALJ had failed to comply with the essential requirements of the law "[b]ecause there has been no suggestion of a procedural irregularity").

Conclusions of Law

Section 120.57(1)(l), Florida Statutes, authorizes the Department to reject or modify a conclusion of law over which the agency has substantive jurisdiction. § 120.57(1)(l), Fla. Stat.; *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1010 (Fla. 1st DCA 2001). If the Department rejects

or modifies any of the ALJ's conclusions of law, then the Department must state with particularity its reasons for rejecting or modifying the conclusion, and must make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. § 120.57(1)(l), Fla. Stat. The Department is not permitted to reject or modify a finding that is substantially one of fact simply by treating the finding as a legal conclusion. *See Abrams v. Seminole Cnty. Sch. Bd.*, 73 So. 3d 285, 294 (Fla. 5th DCA 2011). Additionally, a rejection or modification of a conclusion of law may not form a basis for rejection or modification of a finding of fact. § 120.57(1)(l), Fla. Stat.

Rulings on Petitioner's Exceptions to Recommended Order

(A) Exception 1: Paragraphs 19-21 and 24-27

In Exception 1, Petitioner takes exception to findings of facts and conclusion of law contained in paragraphs 19-21 and 24-27 of the Recommended Order. Petitioner alleges the Recommended Order misinterprets the law, and as a result, erroneously determined the Plan Amendment is internally consistent with the Plan. Petitioner's Exception 1 argues the Recommended Order improperly relies on an LDR rather than the Comprehensive Plan to determine the allowable density on the subject property.

The Department finds there is competent substantial evidence in the record to support the ALJ's findings of facts relating to the allowable density on the subject property. Additionally, the ALJ's findings of fact that the Plan Amendment is consistent with the existing provisions of the Plan is supported by competent substantial evidence. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as

to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 19-21 and 24-27 of the Recommended Order.

To the extent Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 1 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ in paragraphs 19-21 and 24-27 of the Recommended Order. The findings of fact in the Recommended Order support the conclusion of law that the Petitioner failed to prove beyond fair debate that the Plan Amendment is internally inconsistent with the Plan.

Exception 1 is DENIED.

(B) Exception 2: Paragraphs 86-89

In Exception 2, Petitioner takes exception to findings of facts and conclusion of law contained in paragraphs 86-89 of the Recommended Order. Petitioner alleges the Recommended Order misinterprets the law and erroneously concludes the City relied upon professionally accepted data and analysis relating to the allowable density on the subject property. The Department finds there is competent substantial evidence in the record to support the ALJ's determination that the Plan Amendment is supported by relevant data and analysis. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or

scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* The City's witness testified to the data and analysis relied upon in consideration of the Plan Amendment. The ALJ weighed the testimony presented by both parties and determined the more credible evidence supported finding the City relied on appropriate data and analysis. It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 86-89.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 2 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ. The findings of fact in the Recommended Order support the conclusion that the Petitioner did not prove beyond fair debate that the City failed to rely upon professionally accepted data and analysis.

Exception 2 is DENIED.

(C) Exception 3: Paragraphs 38, 41, 45, 62-64, 81, 90, and 92

In Exception 3, Petitioner takes exception to findings of fact and conclusions of law contained in paragraphs 38, 41, 45, 62-64, 81, 90, and 92 of the Recommended Order. Petitioner alleges the Recommended Order misinterprets the law and, as a result, erroneously concludes the Plan Amendment is not internally inconsistent with Plan Policy LU 3.4.

The Department finds there is competent substantial evidence in the record to support the ALJ's findings of facts relating to the Plan Amendment's consistency with Policy LU 3.4. (E.g.,

trans. pgs. 79-81, 135-136, 178-208 Nov. 17, 2020). Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* The City's witness testified to the Plan Amendment's consistency with Comprehensive Plan Policy LU 3.4. (E.g., trans. pgs. 178-208 Nov. 17, 2020). The ALJ weighed the testimony of the City's witnesses with the Petitioner's witness and determined the more credible evidence supported finding the Plan Amendment is consistent with the Plan. It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 38, 41, 45, 62-64, 81, 90, and 92.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 3 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ. The findings of fact in the Recommended Order support the conclusion that the Petitioner did not prove beyond fair debate that the Plan Amendment is internally inconsistent with the Plan.

Exception 3 is DENIED.

(D) Exception 4: Paragraphs 40-42 and 44

In Exception 4, Petitioner takes exception to findings of facts and conclusion of law contained in paragraphs 40-42 and 44 of the Recommended Order. Specifically, the Petitioner

alleges the ALJ failed to make a finding relating to a "limited variation in net density" in determining the Plan Amendment's consistency with Policy LU 3.4.

The Department finds there is competent substantial evidence in the record to support the ALJ made necessary findings of fact in determining the consistency of the Plan Amendment and Policy LU 3.4. Both the Petitioner and the City presented witnesses who testified to the Plan Amendment's consistency with Comprehensive Plan Policy LU 3.4. (E.g., trans. pgs. 79-81, 135-136, 178-208 Nov. 17, 2020). The ALJ weighed these testimonies and determined the more credible evidence supported a finding of consistency between the Plan Amendment and Policy LU 3.4.

Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 40-42 and 44.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 4 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ. The findings of fact in the Recommended Order support the conclusion that the Petitioner did not prove beyond fair debate

that the Plan Amendment is inconsistent with Policy LU 3.4.

Exception 4 is DENIED.

(E) Exception 5: Paragraphs 55 and 56

In Exception 5, Petitioner takes exception to findings of facts contained in, and conclusions of law derived from, paragraphs 55 and 56 of the Recommended Order relating to how Petitioner's witness, Charles Gauthier, calculated the allowable density for the subject property. Petitioner argues the ALJ mischaracterized the amount of information Gauthier reviewed in formulating his opinion, and as a result, may have erroneously concluded the City relied on appropriate data and analysis. The Department finds there is competent substantial evidence in the record to support the ALJ's findings of facts related to witness testimony (E.g., trans. pg. 131, Nov. 17, 2020).

Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* The record reflects the ALJ accepted and considered the testimony of Charles Gauthier as an expert witness for Petitioners. (E.g., trans. pgs. 48–152, Nov. 17, 2020). The record also reflects the ALJ weighed the testimony of each witness presented by the Petitioner and the City, and determined the more credible evidence supported a finding that the Plan Amendment was supported by relevant and appropriate data. It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds

competent substantial evidence supports the ALJ's findings of fact in paragraphs 55 and 56.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 5 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ. The findings of fact in the Recommended Order support the conclusion that the Petitioner did not prove beyond fair debate that the City failed to rely upon professionally accepted data and analysis.

Exception 5 is DENIED.

Adoption of the Recommended Order

The Department has reviewed the Recommended Order and concludes that all findings of fact therein were based upon competent substantial evidence in the record. The Department finds that the proceedings on which the findings of fact were based complied with the essential requirements of law.

The Department has reviewed the ALJ's conclusions of law and finds that all conclusions of law within the Department's substantive jurisdiction are reasonable. The Department does not have any substitute conclusions of law that would be as or more reasonable than the ALJ's conclusions of law.

ORDER

Based on the foregoing, the Department determines that City of St. Petersburg Comprehensive Plan Amendment, adopted by Ordinance 739-L on August 13, 2020, is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes. The Department adopts and incorporates the Recommended Order in its entirety in this Final Order.

Dated this 1 day of April, 2021.

Mario Rubio, Director
Division of Community Development
Florida Department of Economic Opportunity

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION UNDER CHAPTER 120, FLORIDA STATUTES. A PARTY WHO IS ADVERSELY AFFECTED BY FINAL AGENCY ACTION IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(B)(1)(C) AND 9.110.

TO INITIATE JUDICIAL REVIEW OF THIS FINAL AGENCY ACTION, A NOTICE OF APPEAL MUST BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL WITHIN THIRTY (30) CALENDAR DAYS AFTER THE DATE THE FINAL AGENCY ACTION WAS FILED BY THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22, FLORIDA STATUTES. A COPY OF THE NOTICE OF APPEAL MUST ALSO BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 107 EAST MADISON STREET, CALDWELL BUILDING, MSC 110, TALLAHASSEE, FLORIDA 32399-4128, AGENCY.CLERK@DEO.MYFLORIDA.COM. A DOCUMENT IS FILED WHEN IT IS RECEIVED. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(A).

AN ADVERSELY AFFECTED PARTY WAIVES THE RIGHT TO JUDICIAL REVIEW IF THE NOTICE OF APPEAL IS NOT TIMELY FILED WITH BOTH THE DEPARTMENT'S AGENCY CLERK AND THE APPROPRIATE DISTRICT COURT OF APPEAL.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicted this 1st day of April, 2021.

Agency Clerk
Florida Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail

The Honorable Hetal Desai
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PGSP NEIGHBORS UNITED, INC.,

Petitioner,

vs. Case No. 20-4083GM

CITY OF ST. PETERSBURG, FLORIDA,

Respondent.
_____/

RECOMMENDED ORDER

Administrative Law Judge Hetal Desai of the Division of Administrative Hearings (DOAH) conducted a disputed-fact evidentiary hearing on November 17 and 18, 2020, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Shai Ozery, Esquire
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For Respondent: Heather Judd, Esquire
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City of St. Petersburg
Post Office Box 2842
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STATEMENT OF THE ISSUE

Whether the small-scale amendment to the Future Land Use Map (FLUM) of the City of St. Petersburg's (the City) Comprehensive Plan (Comprehensive Plan), adopted by Ordinance 739-L (Ordinance) on

EXHIBIT "A"

August 13, 2020, is "in compliance" as that term is defined in section 163.3184(1)(b), Florida Statutes (2020).[1]

PRELIMINARY STATEMENT

On February 11, 2020, the City of St. Petersburg Community Planning and Preservation Commission (Planning Commission) voted to deny an application by Grace Connection of Tampa Bay, Inc., seeking to amend the FLUM of the Comprehensive Plan, changing the designation of a parcel located at 635 64th Street South, St. Petersburg, Pinellas County, Florida. On February 21, 2020, the applicant appealed the Planning Commission's decision to the City of St. Petersburg Council (City Council), pursuant to section 16.70.040.D.1.b.(2) of the City's Code ("A denial of an application is final except in the case of an application initiated by the City Council unless an appeal is taken to the City Council."). On August 13, 2020, the City Council granted the appeal and adopted the Ordinance. In doing so, it overturned the Planning Commission's denial of the application and adopted the amendment to the FLUM (Amendment) as a small-scale amendment pursuant to section 163.3187(2).

On September 14, 2020, Petitioner, PGSP Neighbors United, Inc. (Petitioner or PGSP), timely filed a Petition for Administrative Hearing (Petition) with DOAH pursuant to section 163.3187, challenging the Ordinance. In the Petition, PGSP alleges the City failed to adhere to its own policies requiring it to (1) direct population concentrations away from known or predicted Coastal High Hazard Areas; (2) provide compatible land use transitions; (3) protect the established compatibility of the character of surrounding areas; and (4) protect existing residential uses from

[1] Except as otherwise noted, all references to Florida Statutes are to the 2020 version, in effect when the Plan Amendment was adopted. All references to the Comprehensive Plan are to the November 2019 version admitted into evidence as Exhibit P-25.

incompatible uses. The Petition also alleges the Plan Amendment was not based upon surveys, studies, and professionally accepted data and analysis.

The matter was assigned to the undersigned and set for a final disputed fact hearing. The parties filed a Joint Pre-Hearing Stipulation on November 12, 2020, and participated in a pre-hearing conference on November 13, 2020, via Zoom. The facts and law stipulated to in the Joint Stipulation and confirmed at the pre-hearing conference have been incorporated in this Recommended Order as appropriate.

At the final hearing, PGSP presented the testimony of Charles Gauthier, who was accepted as an expert in planning; and Dan Porter, who was accepted as an expert in local real estate. PGSP's Exhibits P-1 through P-23 were admitted into evidence. The City presented the testimony of three employees: Derek Kilborn, manager of the Urban Planning and Historic Preservation Division in the City's Planning and Development Services Department (Planning Department); Elizabeth Abernethy, Director of the Planning Department; and Thomas Whalen, a Planner III. Mr. Kilborn and Ms. Abernethy were accepted as experts in land use planning and development, comprehensive planning, and zoning. Mr. Whalen was accepted as an expert in transportation planning. The City's Exhibits R-A through R-W were admitted into evidence.

The transcript of the final hearing was filed with DOAH on December 16, 2020. The parties requested and were granted additional time for filing proposed recommended orders (PROs).[2] Both parties timely filed PROs on

[2] By agreeing to an extended deadline of more than ten days after the filing of the transcript for filing PROs, the parties waived the 30-day time period for issuing the Recommended Order. *See* Fla. Admin. Code R. 28-106.216.

February 1, 2021, which have been duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties and Property

1. Petitioner, PGSP, is a membership organization, with 118 members. It is registered with the State of Florida as a not-for-profit corporation located in St. Petersburg, Florida. PGSP's stated mission is to promote healthy urban development throughout St. Petersburg; it was formed to promote development and growth compatible with surrounding neighborhoods. It works with the City and residents to ensure new development is cohesive with existing and planned environmental and infrastructural demands.

2. Respondent, City of St. Petersburg, is a political subdivision of the State of Florida that is subject to the requirements of chapter 163, Part II, Florida Statutes.

3. The subject property is located at 635 64th Street South, St. Petersburg, Pinellas County, Florida (Property). It is owned by Grace Connection of Tampa Bay, Inc., operating as Grace Connection Church (Church). The Church was the applicant for the Amendment at issue but is not a party to this action.

4. The Property is triangular in shape with a total of 4.66 acres. To the north and west, the Property is bounded by Bear Creek, a natural water feature. To the east, the Property is bounded by 64th Street South, a "Collector, City Road." To the south, the Property is bounded by an undeveloped 40-foot right-of-way.

5. A portion of the Property that abuts Bear Creek is located in a Coastal High Hazard Area (CHHA).[3] Respondent has not sought changes to the portion of the Property that is within the CHHA.

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[3] The Property is also within the projected storm surge in Hurricane Evacuation Level "D," which is a Pinellas County emergency management designation, and not a part of the City's Comprehensive Plan.

6. The Property is currently categorized for Neighborhood Suburban (NS-1) zoning (which is separate from its Future Land Use Category).

7. A substantial number of PGSP members live within the City, in close proximity to the Property and allege they will be adversely affected by the concomitant impacts of increased densities in the community as addressed in these proceedings.

The Ordinance

8. The Church's application sought to amend the FLUM of the Comprehensive Plan. The application divided the non-portion of the CHHA into three portions and sought to make the following changes to the Future Land Use categories:

> A PORTION OF THE SUBJECT PROPERTY (APPROX. 4.33 ACRES), FROM I (INSTITUTIONAL) TO RM (RESIDENTIAL MEDIUM); A PORTION OF THE SUBJECT PROPERTY (APPROX. 0.21 ACRES), FROM I (INSTITUTIONAL) TO RU (RESIDENTIAL URBAN); AND A PORTION OF THE SUBJECT PROPERTY (APPROX. 0.04 ACRES), FROM RU (RESIDENTIAL URBAN) TO RESIDENTIAL MEDIUM (RM).

9. On August 13, 2020, the City Council had a public hearing on the Church's appeal of the denial of its application by the Planning Commission. At this hearing, PGSP members submitted oral or written comments, recommendations, or objections to the City.

10. At the August 13 meeting, the City Council adopted the Ordinance. This had the effect of adopting the Amendment and changing the Future Land Use categories to the Property.

11. The Ordinance instituted a small-scale amendment to the FLUM, as defined by section 163.3187(2).

Maximum Density

12. Petitioner argues the Ordinance is not "in compliance," as defined in sections 163.3184(1)(b) and 163.3187(4). Specifically, PGSP attacks the Amendment because it does not (1) direct "population concentrations" away from areas designated as a CCHA; (2) provide for compatible land use transitions; and (3) preserve the existing character of the surrounding areas. Each of these claims are either partially or wholly dependent on the increased maximum density for the Property after the Amendment. As such, the threshold issue of density must be addressed.

13. This dispute involves the 4.37 acre that are changed from the Residential Urban (RU) and Institutional land use categories to Residential Medium (RM) made up of approximately 4.33 acres from Institutional to RM and approximately 0.04 acres from RU to RM.

14. The "Institutional" designation allows a density of 12 dwelling units per acre but limits residential use as an accessory to the primary institutional use, which in this case is a church.[4] The Church submitted the application for the FLUM amendment because it ultimately seeks to sell the Property for multi-family housing development, which would not be a proper use in an area designated "Institutional."

15. The Future Land Use categories for the area to the north and east of the Property are RU, which have a density of 7.5 units per acre. *See* Comprehensive Plan Policy LU 3.1A.2. This area is primarily made up of single-family homes.

16. The southern boundary of the property is also the municipal border between St. Petersburg and an unincorporated portion of Pinellas County. This area is governed by the Pinellas County FLUM and Pinellas County Comprehensive Plan. The adjacent property to the south is a mobile home park development which has a residential density of 20.4 units per acre.

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[4] Pursuant to section 16.10.020.2 of the City's Code, Institutional uses include, "government buildings and grounds, and cemeteries, hospitals, houses of worship and schools."

17. In between the RU and RM categories is a category labeled "Residential Low Medium" (RLM). The RLM category allows low to moderately intensive residential development with a density not to exceed ten dwelling units per acre. *See* Comprehensive Plan Policy LU 3.1A.3.

18. As stated above, the Ordinance would categorize the portion of the Property at issue as RM. The RM category allows medium density residential development and has a maximum density of 15 dwelling units per acre, with a possible maximum density of 30 dwelling units per acre with the qualification of a density bonus. *See* Comprehensive Plan Policy LU 3.1A.4.

19. PGSP argues the density of the areas designated as RM by the Ordinance will have a maximum possible density of 30 dwelling units per acre. The City argues the maximum density is calculated using the actual density that can be built in the RM areas. As explained below, the practical allowable density of 15 dwelling units per acre with a Workforce Housing Bonus of six, or 21 dwelling units per acre.

20. Petitioner relies on a "Missing Middle Housing" density bonus allowable in Neighborhood Traditional Mixed Residential (NTM) zoning category. This bonus allows up to 30 units per acre as an incentive to develop housing that is lacking in the area.

21. While NTM is an available zoning category for RM, the Plan specifically states that 30 dwelling units per acre is only "permitted in accordance with the Land Development Regulations [LDRs]." Per the LDRs, the NTM designation could not be placed over this parcel because the designation is used as a transitional zoning category in St. Petersburg's traditional neighborhoods.

22. While PGSP's planning expert considered the neighborhood surrounding the Property to be traditional, he admitted his opinion was not based on standards in the Comprehensive Plan or LDR definitions regarding what is considered a traditional or suburban neighborhood.

23. In contrast, Derek Kilborn, a manager in the City's Planning Department, testified about the different characteristics of traditional versus suburban neighborhoods and opined that the neighborhood surrounding the Property is "suburban" according to the terms in the Comprehensive Plan. This determination is bolstered by the existing zoning of the surrounding neighborhood being largely NS-1.

24. The City established it would be impossible for the Property to qualify for the Missing Middle Housing bonus, because the parcel at issue is not in the NTM zoning category. Rather, as explained by Mr. Kilborn's testimony and based on the LDRs and the Comprehensive Code, the RM category only allows a maximum of 15 dwelling units per acre.

25. The Church has not applied to rezone the Property. The Planning Department's director testified, however, that if the Church had applied for a rezoning for the Property to NTM, the maximum number of dwelling units would be less than the numbers asserted by Petitioner due to the requirements for spacing, alleyways, and height restrictions required in NTM zones.

26. The Property is eligible for a Workforce Housing density bonus. This bonus would increase the maximum density by six dwelling units for workforce housing. The City's final density calculation incorporated the Workforce Housing bonus and determined the maximum density for the RM portion of the Property to be 21 dwelling units per acre.

27. PSGP did not prove beyond fair debate that the actual density of 21 units per acre is an erroneous calculation or contrary to the Comprehensive Plan.

Consistency with Objective CM 10B and Policy CM 10.6[5]

28. Comprehensive Plan Objective CM 10B states:

> The City shall direct population concentrations away from known or predicted coastal high hazard areas consistent with the goals, objectives and policies of the Future Land Use Element.

29. The phrase "Population concentrations" is not defined by the Comprehensive Plan.

30. The only policy referring to "directing" related to Objective CM 10B is Policy CM 10.6, which states:

> The City shall direct population concentrations away from known or predicted coastal high hazard areas by not locating water line extensions in the coastal high hazard area, beyond that which is necessary to service planned zoning densities as identified on the Future Land Use Map.

31. The remaining policies related to this Objective involve the placement of transportation and infrastructure, expenditures for flood control, and the operation of roads in a CHHA; none of these issues were raised in these proceedings. In fact, other than the reference to placement of water line extensions in Policy CM 10.6, there is no provision establishing standards for what would constitute direction away from a CHHA.

32. The only area on the Property designated a CHHA is near Bear Creek.[6] The Ordinance does not increase density in any part of the CHHA portion of the Property.

33. PGSP's planning expert, Charles Gauthier, equated a population concentration as an area with high density. He argued the Ordinance

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[5] "CM" means Coastal Management in the Comprehensive Plan.

[6] Mr. Kilborn testified that in reviewing the property for compliance with the Plan related to CHHA, there was no study or analysis provided to the City by Petitioner or others showing flooding or hazard impacts for the non-CHHA portion of the Property.

violated Policy 10.6 because it increased the density of the area on the Property adjacent to the CHHA. At one point, Mr. Gauthier seemed to say this policy encourages higher density future land use categories only in the "central core or spine of the City." Mr. Gauthier maintained the increase in density on the non-CHHA portion of the Property frustrated this policy because only land in the central part of St. Petersburg should experience density increases. PGSP's reasoning would imply any increase in density near any CHHA and not near the "central core" would violate Policy CM 10.6.

34. Elizabeth Abernethy, Director of the Planning Department, testified that "population concentrations" as contemplated by the Comprehensive Plan are not simply increases in density. Rather, the City core had a concentration of high-density categories yielding approximate 80 to 120 dwelling units per acre; she would not characterize 15 or even 30 units per acre as a "high density" much less a "population concentration." Although she concurred that there are "population concentrations" in St. Petersburg centered in its urban core, she disagreed with Petitioner's expert that increased density on the Property created a "population concentration" near the CHHA or Bear Creek area.

35. There was no competent evidence as to where any water line extensions would be located if the Property's Future Land Use Category were to change from RU and Industrial to RM.

36. The City's interpretation of "population concentration" as used in CM 10.6 is reasonable, and therefore, the City's determination that the Ordinance is in compliance with CM 10.6 is fairly debatable.

Consistency with LU 3.4[7]

37. Comprehensive Plan Policy LU 3.4 states:

> The Land Use Plan shall provide for compatible land use transition through an orderly land use arrangement, proper buffering, and the use of physical and natural separators.

[7] "LU" refers to Future Land Use Element in the Comprehensive Plan.

38. Petitioner focuses on compatible land use transition as only a function of density. PGSP argues a parcel categorized as RM (15 unity density) cannot abut an RU (7.5 unit density) categorized parcel because it violates Policy LU 3.4. Rather, it argues the RLM (10 unit density) category should have been used instead. It claims the City "leap-frogged" categories instead of using a "one step" up or down approach.

39. PGSP's expert admits that a direct step down between plan categories is not explicitly required under the Comprehensive Plan language but argues other language related to "limited variation" required the single step.

40. The plain language of Policy LU 3.4, however, simply requires an "orderly land use arrangement." It does not explicitly or implicitly state that the City must use a "step up" approach when determining the appropriate Future Land Use category.

41. Furthermore, PGSP relied on its density calculation of 30 dwelling units per acre to argue that with the surrounding adjacent land density of 7.5 units per acre, there would be a 400% increase in planned residential density. As stated above, the maximum possible density under the Amendment is 21 dwelling units per acre.

42. Moreover, the City points out that that the mobile home park to the south of the Property has an actual density of approximately 20 dwelling units per acre. Thus, the transition from 20 to 21 is an orderly land use arrangement as contemplated by Policy LU 3.4.

43. The FLUM also does not reflect a perfect one up or down transition pattern throughout St. Petersburg. Rather, it shows areas categorized RM abutting areas categorized RU and RLM. In fact, there is an area designated RM which abuts RU parcels within 800 feet of the Property.

44. The City presented adequate evidence establishing the change from Institutional to a residential category fits with surrounding residential use. Moreover, it established that natural and physical barriers on the Property,

including creeks and right of ways, provide transition as contemplated by Policy LU 3.4. PGSP does not explain why these barriers are inadequate.

45. Petitioner did not prove beyond fair debate that the Ordinance is inconsistent with Policy LU 3.4.

Consistency with Objective Policy LU 3.6

46. Policy LU 3.6 states:

> Land use planning decisions shall weigh heavily the established character of predominately developed areas where changes of use or intensity of development are contemplated.

47. PGSP argues the increase in density as a result of the change in categories from RU to RM is inconsistent with the "character" of the surrounding neighborhood, which is made up of single-family homes. Again, PGSP's argument relies heavily on the density calculation of 30 units per acre. As stated above, this density is only available with a change to the underlying zoning to NTM, which was not sought by the Church in its application. The maximum density applicable to the RM portions of the Property is 21 dwelling units per acre.

48. As stated above, the City established there are other instances of RM abutting RU in the same neighborhood, approximately 800 feet from the Property. Ms. Abernathy testified that, based on the City's historic development pattern, RM is the appropriate transitional category next to RU on a major street (such as 64th Street South) under the Comprehensive Plan.

49. Ms. Abernethy further testified that residential single-family use adjoining either residential multi-family or commercial uses in the City is a "very common development pattern." Therefore, the RM designation is not inconsistent with Policy LU 3.6. Moreover, the RM designation provides for a primary residential use, which the Institutional designation does not.

50. Although PGSP focused solely on density as the grounds for evaluating the "established character of the neighborhood," the City

established that several other considerations go into its analysis related to Policy LU 3.6. Beyond looking at existing and proposed densities of the Future Land Use categories, City staff considers the occurrences and relationships between the uses of the property (i.e., residential versus institutional; or residential versus residential) and the existence of similar patterns in the surrounding neighborhood. In this case, the surrounding areas included other areas designated RM and the mobile home park.

51. Determination of the character of the neighborhood was also based on a study of the existing road network and the potential impacts on traffic due to the Amendment. The street classification of 64th Street South as a Future Major was a key consideration in determining whether the changes in the Property were consistent with the character of the surrounding area because that street is the Property's frontage and only access point.

52. Petitioner did not prove beyond fair debate that the Ordinance is inconsistent with Policy LU 3.6.

Data and Analysis

53. PGSP also claims the City did not rely on relevant and appropriate data and analysis in adopting the Ordinance and Amendment. PGSP, however, did not conduct or provide the City with any studies.[8]

54. Daniel Porter, PGSP's expert in real estate, did not provide a comparative market analysis of the neighborhood or any other industry-recognized report. He proffered only opinion testimony based on email responses from four nearby residents, only one of which alluded to any issues with selling a home in the area.

[8] PGSP retained Mr. Gauthier for this administrative proceeding; he did not testify or prepare a report to the Planning Commission or the City Council. Petitioner's members presented no opposing reports or studies beyond lay opinion testimony during the public hearing.

55. Mr. Gauthier testified that in calculating his density and formulating his opinions, he used the City's map set and GIS data from the City's website.[9]

56. In contrast, the City relied on several data sources in reaching its conclusions regarding compliance in the Staff Report, in the presentations at the City Council meeting, and at the final hearing. These sources include the Comprehensive Plan and maps; LDRs; GIS aerials and maps; application materials; a narrative from the property owner; plat records; the Pinellas Countywide Plan Rules; and an outside Traffic Impact Statement by a traffic engineering firm, Kimley-Horn.

57. In addition to the Kimley-Horn report, Tom Whalen, the City's transportation planning expert, performed an analysis related to 64th Street South, which was included in the Staff Report. He also testified at the final hearing regarding his sources for that data, including a City-conducted traffic count, use of the Florida Department of Transportation's level of service tables, and the Forward Pinellas Countywide Rules.

58. At the final hearing, the City also presented demonstrative exhibits in the form of enlarged maps illustrating the surrounding neighborhood, the Property, and similar development patterns of RM and RU designations across the City.

59. Regarding the density calculation, the City introduced and explained the reasons and sources supporting its maximum density figure of 21 dwelling units per acre. This included the Pinellas Countywide Plan Rules, the Comprehensive Plan, and LDRs.[10]

60. The City established the Ordinance and Amendment are based upon surveys, studies, and data regarding the character of the land.

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[9] "GIS" is Geographic Information Systems.

[10] Moreover, Mr. Kilborn explained that exact density calculations would be finalized during the site plan review process, which involves further surveys and engineering measurements.

61. Petitioner failed to prove beyond fair debate that the Ordinance was not supported by data and analysis, and/or that the City's response to that data and analysis was not appropriate.

Ultimate Findings

62. PGSP did not prove beyond fair debate that the Ordinance is not in compliance. All other contentions not specifically discussed have been considered and rejected.

63. The City has provided a preponderance of the evidence, which is both competent and substantial, which supports the findings in the Staff Report and the City Council's adoption of the Ordinance.

64. The City's determination that the Ordinance is in compliance is fairly debatable.

CONCLUSIONS OF LAW

Scope of Review and Standing

65. DOAH has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), 163.3184, and 163.3187, Florida Statutes.

66. Chapter 163, part II (Community Planning Act), and the case law developed pursuant thereto, are the applicable law in this proceeding. *See Amelia Tree Conservancy, Inc. v. City of Fernandina Beach*, Case No. 19-2515GM (Fla. DOAH Sept. 16, 2019; Fla. DEO Oct. 16, 2019). A hearing on a plan amendment is a *de novo* proceeding. *Id.*

67. To have standing to challenge a comprehensive plan amendment, a person must be an "affected person" as defined in the Community Planning Act, section 163.3184(1)(a). The parties have stipulated that PGSP qualifies as an "affected person" and has standing to challenge the Ordinance.

68. As the party challenging the Amendment to the Comprehensive Plan's FLUM, PGSP must show the Amendment is not "in compliance" as defined in sections 163.3184(1)(b) and 163.3187(4). "In compliance" includes consistency

with the requirements of sections 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248.

69. In this proceeding, PGSP asserts the Amendment is inconsistent with the following policies in the Comprehensive Plan: Objective CM 10B and Policy CM 10.6.; Policy LU 3.4; and Policy LU 3.6.

Burden and Standard of Proof

70. As the party challenging the Ordinance, PGSP has the burden of proof. The findings of fact in this matter are to be determined by a preponderance of the evidence. *See* § 120.57(1)(j), Fla. Stat.

71. The City's determination that the Ordinance is "in compliance" is presumed to be correct and must be sustained if the City's determination of compliance is fairly debatable. *See* § 163.3187(5)(a), Fla. Stat.; *Coastal Dev. of N. Fla. v. City of Jacksonville Beach*, 788 So. 2d 204, 210 (Fla. 2001).

72. The term "fairly debatable" is not defined in chapter 163. In *Martin County. v. Yusem*, 690 So. 2d 1288, 1295 (Fla. 1997), however, the Florida Supreme Court explained, "[t]he fairly debatable standard is a highly deferential standard requiring approval of a planning action if a reasonable person could differ as to its propriety." The Court further explained, "an ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity." *Id.* Put another way, where there is "evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that the [City's] decision was anything but 'fairly debatable.'" *Martin Cty. v. Section 28 P'shp, Ltd.*, 772 So. 2d 616 (Fla. 4th DCA 2000).

73. "A compliance determination is not a determination of whether a comprehensive plan amendment is the best approach available to the local government for achieving its purpose." *See Martin Cty. Land Co. v. Martin Cty.*, Case No. 15-0300GM, at RO ¶ 149 (Fla. DOAH Sept. 1, 2015; Fla. DEO Dec. 30, 2015). Moreover, in a compliance determination, the motives of the

local government are not relevant. *See Pacetta, LLC v. Town of Ponce Inlet*, Case No. 09-1231GM (Fla. DOAH Mar. 20, 2012; Fla. DEO June 19, 2012).

74. The findings of fact must additionally be supported by competent, substantial evidence. *See Payne v. City of Miami,* 52 So. 3d 707, 735 (Fla. 3d DCA 2010).

75. The competent, substantial evidence standard of review has been described as:

> [E]ffectively [ ] the same standard [as] the "fairly debatable" test for review of legislative municipal zoning action: For the action to be sustained, it must be reasonably based in the evidence present. By whatever name it is called, the task of the court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion. If there was such evidence presented, the authority's determination must stand.

Indialantic v. Nance, 400 So. 2d 37, 40 (Fla. 5th DCA 1981) (internal quotations and citations omitted).

76. Mere "generalized statements in opposition to a land use proposal, even those from an expert, should be disregarded" and fail the competent, substantial evidence standard. *See City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003).

Internal Consistency with the Comprehensive Plan

77. Section 163.3177(2) requires the several elements of the comprehensive plan to be consistent. A plan amendment creates an internal inconsistency when it conflicts with an existing provision of the applicable comprehensive plan.

78. The Comprehensive Plan is formatted with goals, objectives, and policies that describe how the City's programs, activities, and land development regulations will be initiated, modified, or continued, to

implement the Comprehensive Plan in a consistent manner. *See* § 163.3177(1), Fla. Stat.

79. In the context of the Community Planning Act, goals are statements of long-term vision or aspirational outcomes and are not measurable in and of themselves. Goals must be implemented by intermediate objectives and specific policies to carry out the general plan goals. *See* § 163.3164(19), (34), and (37), Fla. Stat.

80. Internal consistency does not require a comprehensive plan amendment to further every goal, objective, and policy in the comprehensive plan. It is enough if a plan provision is "compatible with," (i.e., does not conflict with) other goals, objectives, and policies in the plan. If the compared provisions do not conflict, they are coordinated, related, and consistent. *See Melzer, et al. v. Martin Cty.*, Case Nos. 02-1014GM and 02-1015GM, at RO ¶¶ 194-195 (Fla. DOAH July 1, 2003; Fla. DCA Oct. 24, 2003).

81. Based on the foregoing Findings of Fact, Petitioner did not prove beyond fair debate that the Ordinance is inconsistent with Comprehensive Plan Element CM 10B, or Policies CM 10.6, LU 3.4, and LU 3.6.

Data and Analysis

82. Section 163.3177(1)(f) requires all plan amendments be based on "relevant and appropriate data and an analysis by the local government." § 163.3177(1)(f)2., Fla. Stat. "The statute explains that to be based on data 'means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the ...plan amendment at issue.'" *222 Lakeview LLC v. City of West Palm Beach*, Case No. 18-4743GM, at RO ¶ 84 (Fla. DOAH Dec. 26, 2018), *aff'd per curium*, 295 So. 3d 1185 (Fla. 4th DCA 2020).

83. All data available to the local government and in existence at the time of adoption of the plan amendment may be presented at the final hearing in this proceeding. *See 1182/3526S Rouse LLC and 1185/3626 Rouse LLC v. Orange Cty*, Case No. 18-5985GM, RO at ¶ 62 (Fla. DOAH Oct. 14, 2019).

84. Relevant analysis of data need not have been in existence at the time of adoption of a plan amendment. Data existing at the time of adoption may be analyzed through the time of the administrative hearing. *222 Lakeview LLC,* Case No. 18-4743GM at RO ¶ 86.

85. Data supporting an amendment must be taken from professionally accepted sources. *See* § 163.3177(1)(f)2., Fla. Stat. However, local governments are not required to collect original data. *Id.*

86. PGSP argued (1) the City did not have data to support the Ordinance and (2) the City did not look at enough data to support the Ordinance. However, consistent with its burden of proof, Petitioner must do more than simply allege a land use amendment is not based upon the best available existing data. PGSP was required to specifically identify the best available existing data it claims the City could have used but failed to use. *See Envt'l Coalition of Fla., Inc. v. Broward Cty.*, 586 So. 2d 1212, 1215 (Fla.1st DCA 1991). "The fact that other data may be available is irrelevant, as long as the data upon which the City's decision to adopt the amendment is based is taken from professionally accepted sources and gathered through professionally accepted methodologies." *Amelia Tree Conservancy, Inc.*, Case No. 19-2515GM RO at ¶ 152.

87. The City Council properly relied upon the Staff Report in adopting the Ordinance, which further qualifies as competent, substantial evidence. As reflected in the Staff Report, the presentation to the City Council, and the evidence at the final hearing, the City relied upon several sources of data and analyses in support of its determination of the Amendment's compliance. *See Katherine's Bay, LLC v. Fagan*, 52 So. 3d 19, 28 (Fla. 1st DCA 2010).

88. The evidence demonstrated there was extensive data and analysis, taken from professionally accepted sources and gathered through professionally accepted methodologies, to support the Ordinance.

89. PGSP failed to prove beyond fair debate that the Ordinance is not based on relevant and appropriate data and analysis by the City, as required by section 163.3177(1)(f).

Summary

90. For the reasons stated above, the City's determination that the Ordinance is "in compliance" is fairly debatable.

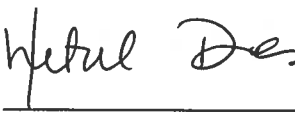
91. DOAH is not permitted to "substitute its discretion for that of the legislative body if the issue is a fairly debatable one." *Orange Cty. v. Butler Estates Corp.*, 328 So. 2d 864, 866 (Fla. 4th DCA 1976).

92. For the reasons state above, PGSP did not prove beyond fair debate that the Ordinance is not "in compliance," as that term is defined in section 163.3184(1)(b).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Economic Opportunity enter a final order determining the City of St. Petersburg Comprehensive Plan Amendment, Ordinance 739-L, is "in compliance" as that term is defined by section 163.3184(1)(b).

DONE AND ENTERED this 3rd day of March, 2021, in Tallahassee, Leon County, Florida.



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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.